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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

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| IN RE |) | |
| |) | Case No. 96-02095 |
| TERRY HIPWELL, |) | |
| |) | SUMMARY ORDER |
| Debtor. |) | |
| _____ |) | |

This is a Chapter 12 case filed by Debtor Terry Hipwell. On December 9, 1998, the Court conducted a hearing on the Motion for Relief from Automatic Stay filed in this case by Creditor Land View Fertilizer, Inc. ("Land View"). In the motion, Land View seeks relief from the Section 362 stay to continue prosecution of an action in state court against another of Debtor's creditors, The Amalgamated Sugar Company, LLC ("TASCO"). After consideration of the record and arguments of the parties, the Court concludes Land View's Motion should be granted.

Debtor obtained credit from Land View and TASCO to grow sugar beets in 1995. Both creditors were granted security interests in Debtor's crop to secure the amounts advanced. Land View and TASCO also entered into a subordination agreement concerning, as between the two creditors, how any proceeds from the crop proceeds would be apportioned

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among their competing secured claims. TASCO purchased the crops from Debtor.

In the bankruptcy case, Debtor sought a turn over order from the Court requiring TASCO to pay over to Debtor the crop proceeds under 11 U.S.C. § 542. TASCO objected, and asserted a right to apply the crop proceeds to the amounts owed to it by Debtor. In a decision entered in this case on March 18, 1997, this Court denied Debtor's turn over motion, and authorized TASCO to offset the amounts it owed Debtor for purchase of crops against the amounts Debtor owed TASCO for credit advances. In a part of the decision labeled "Issues Not Resolved by this Decision," the Court indicated that:

the Court was informed that TASCO and Land View Fertilizer entered into certain subordination or similar agreements regarding the parties' respective rights in Debtor's crops. Any disputes arising from those agreements are likewise matters saved for another day.

Memorandum of Decision, p. 17.

Debtor confirmed a Chapter 12 plan, but has now defaulted in its performance. The Court is informed that the Chapter 12 Trustee, per the terms of the plan, is winding up the operation. Land View sued TASCO in state court for breach of the parties' agreements. When both parties asked

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the state court for summary judgment, the state district judge justifiably expressed concern over the status of the automatic stay emanating from Debtor's bankruptcy filing. Land View then filed its present Motion.

Neither Debtor nor the Trustee claim any interest in the crop proceeds at issue, nor have they objected to Land View's Motion. TASCOCO objects, however, arguing that resolution of the issues between Land View and TASCOCO are matters properly adjudicated by this Bankruptcy Court, not by the state court. TASCOCO also argues that Land View's claims are barred by the doctrine of *res judicata* as a result of this Court's prior decision.

"The decision to grant or deny relief from the automatic stay is committed to the sound discretion of the bankruptcy court" *Benedor Corporation v. Conejo Enterprises, Inc. (In re Conejo Enterprises)*, 96 F.3d 346, 351 (9th Cir. 1996). The Court concludes Land View has shown good grounds for relief from the automatic stay. The state court action is one, essentially, to determine whether TASCOCO violated its agreement with Land View in the application of the Debtor's crop proceeds to TASCOCO's accounts. Neither the Debtor nor the Trustee contend that the bankruptcy estate has any equity in the crop proceeds. The funds are not necessary for any continuing reorganization plan. See 11 U.S.C. § 362(d)(2). Moreover, while

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the outcome of the state court action may have an impact on the amount of the creditors' claims in the bankruptcy case, all the issues in the state court action involve state law, and there is no good reason to suggest that the state court can not promptly and fairly adjudicate those issues. The efficiency in allowing that action to proceed to judgment is further cause for relief from the stay. See 11 U.S.C. § 362(d)(1); *In re Estep*, 98.3 I.B.C.R. 73 (citing *Santa Clara County Fair Association, Inc. v. Sanders (In re Santa Clara County Fair Association, Inc.)*, 180 B.R. 564, 566 (9th Cir. B.A.P. 1995)).

The argument that Land View's rights vis-a-vis TASCOCO were somehow adjudged in this Court's March, 1998 decision resolving Debtor's Section 542 motion simply ignores the express provisions of that decision. The only issues decided by the Court therein involved whether, as between Debtor and TASCOCO, TASCOCO should be required to turn over the crop proceeds to the Debtor. The Court decided no turn over was appropriate because of TASCOCO's set off rights, and granted TASCOCO stay relief to effect its offset. The Court "saved for another day" any ruling concerning potential disputes between TASCOCO and Land View over the crop proceeds, so no final judgment or order was entered regarding those issues.

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This Court appreciates the learned state judge's sensitivity concerning the scope and existence of the bankruptcy automatic stay. However, the state court is now an appropriate forum in which these matters should proceed.

For these reasons, **IT IS HEREBY ORDERED THAT** Land View's Motion for Relief from Automatic Stay be and is hereby **GRANTED** so that the parties may continue the state court action to a conclusion.

DATED This 18th day of December, 1998.



JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

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CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

Terry Hipwell
30932 Shelton
Parma, Idaho 83660

Howard R. Foley, Esq.
P. O. Box 10
Meridian, Idaho 83680

D. Samuel Johnson, Esq.
WHITE, PETERSON, PRUSS, MORROW
& GIGRAY
P. O. Box 247
Nampa, Idaho 83653

Richard C. Boardman, Esq.
PENLAND MUNTHUR BOARDMAN
P. O. Box 199
Boise, Idaho 83701

Ronald D. Schoen
P. O. Box 216
Payette, Idaho 83661

CASE NO.: 96-02095

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED: 12/18/98

By 
Deputy Clerk

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